

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 2, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL DEAN BILLINGS,

Defendant - Appellant.

No. 17-6004
(D.C. No. 5:14-CR-00306-M-1)
(W.D. Okla.)

ORDER

Before **MATHESON** and **PHILLIPS**, Circuit Judges.

On January 12, 2017, the United States filed a motion to dismiss this appeal as untimely. Michael Dean Billings subsequently filed a motion in the district court for an extension of time to appeal and, in response to the government's motion to dismiss, he asked this court to remand to the district court for consideration of his motion. We directed the United States to respond to Billings' request to remand. In the interim, the district court granted Billings' motion for an extension of time to appeal. Billings has filed a request to resume briefing, which is construed as a motion to reactive the appeal. In light of the district court's order, the United States does not object to a remand or, alternatively, to the denial of its motion to dismiss based on untimeliness.

Upon consideration, we construe the United States' nonopposition to the denial of its motion to dismiss as a withdrawal of that motion. Accordingly, the motion is withdrawn.

Billings' request to reactivate the appeal is granted. The suspension of briefing is lifted. Briefing will be scheduled in accordance with Fed. R. App. P. 31 and 10th Cir. R. 31.1(A)(1) once the district court notifies this court and the parties that the record is complete for purposes of appeal. However, the district court cannot certify the record is complete until any necessary transcripts are on file.

The deadline for Billings to file a transcript order form was January 24, 2017. To date, no transcript order has been filed. **Within 7 days** from the date of this order, Billings shall file a transcript order form, or notice that no transcript is necessary. 10th Cir. R. 10.1(A).

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Jane K. Castro
Counsel to the Clerk